

FIRST DIVISION
September 30, 2011

No. 1-10-2210

Notice: This order was filed under Illinois Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County
)	
v.)	No. 09 C660722
)	
WALTER MATTHEWS,)	Honorable
)	Luciano Panici,
Petitioner-Appellant.)	Judge Presiding.
)	

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *HELD:* The aggravated unlawful use of a weapon statute, which prohibits the carrying of a loaded firearm on a public way, is not an unconstitutional infringement on defendant's second amendment right to bear arms.

¶ 2 Defendant was convicted of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2009)) and was sentenced to two years' probation. Defendant now appeals and argues that the AUUW statute, which prohibits the carrying of a loaded firearm on a public way, is an unconstitutional infringement on his second

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amendment right to bear arms. We disagree and affirm defendant's conviction.

¶ 3

BACKGROUND

¶ 4 Defendant does not challenge the sufficiency of the evidence against him.

Therefore, we discuss only those facts relevant to the disposition of this appeal.

¶ 5 The evidence at trial established that defendant was pulled over by the Illinois State Police for a traffic violation. When it was discovered that defendant's driver's license was suspended, defendant was arrested and placed in the back of the patrol car. Before defendant's vehicle could be towed away, the vehicle was searched to inventory valuable items. During the search, one of the officers found an uncased black and chrome handgun, loaded with 15 rounds, between the passenger's seat and the center console. After his arrest, defendant was Mirandized and gave a statement admitting that he knew the gun was in his car, but that it did not belong to him.

¶ 6 Following a bench trial, defendant was convicted of three counts AUUW. Count One alleged that defendant had on his person an uncased, loaded, and immediately accessible gun while not on his own land, abode or fixed place of business. Count Two alleged that defendant had in his vehicle an uncased, loaded, and immediately accessible gun while not on his own land, abode or fixed place of business. Count Three alleged that defendant had on his person, while on a public street, an uncased, loaded, and immediately accessible gun while not on his own land, abode or fixed place of business, and while not an invitee on the public street for purpose of display of a weapon. Defendant was sentenced to two years' probation and 35 days in jail, time

served. It is from this conviction that defendant now appeals.

¶ 7 ANALYSIS

¶ 8 Defendant argues that his AUUW conviction should be vacated because the subsections of the AUUW statute that criminalize the possession of a loaded firearm outside one's home violate both the state and federal constitutional right to bear arms. Defendant relies on the United States Supreme Court's recent rulings in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *District of Columbia v. Heller*, 554 U.S. 570, 594-601 (2008) in support of his argument that the second amendment protects an individual's inherent right to carry a firearm outside of the home for self-defense purposes.

¶ 9 In *Heller*, the Supreme Court struck down a District of Columbia law that banned the possession of handguns in the home when it found that the second amendment protects the right to keep and bear arms in one's home for the purpose of self-defense. *Heller*, 554 U.S. 570. Likewise, in *McDonald*, the plurality of the Court concluded that the right to possess a handgun in the home was a fundamental right and was applicable to the states under the due process clause. *McDonald*, 130 S. Ct. at 3050.

¶ 10 Defendant urges this court to expand the holdings in *Heller* and *McDonald* to invalidate the subsections of the AUUW statute, of which he was convicted. Essentially, defendant asks this court to read *Heller* and *McDonald* more broadly to find that the AUUW statute implicates his second amendment right to carry loaded and easily accessible weapons outside of the home for self-defense purposes.

¶ 11 This court has considered and rejected arguments identical to that raised by

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defendant in this case in *People v. Mimes* , 2011 WL 2507054 (1st Dist. 2011); *People v. Aguilar*, 408 Ill. App. 3d 36 (1st Dist. 2011); *People v. Williams*, 405 Ill. App. 3d 958 (1st Dist. 2010); and *People v. Dawson*, 403 Ill. App. 3d 499 (1st Dist. 2010). As this court has repeatedly found, the AUUW statute does not implicate the fundamental right announced in *Heller* and extended to the states under *McDonald*. See *Heller*, 128 S. Ct. at 2801-12; *McDonald*, 130 S. Ct. at 3046-47 (holdings limited to "the right of law-abiding responsible citizens to use arms in the defense of hearth and home").

¶ 12 We agree with the reasoning in *Mimes*, *Aguilar*, *Williams* and *Dawson* and find no reason to depart from the holdings that the AUUW statute, which limits the right of citizens to carry loaded and accessible firearms outside of their homes on their person and in their vehicles, does not violate the second amendment. See *Mimes*, 2011 WL 2507054 at 17-19, *Aguilar*, 408 Ill. App. 3d at 148-49, *Williams*, 405 Ill. App. 3d at 963, *Dawson*, 403 Ill. App. 3d at 607. We therefore reject defendant's argument in this case.

¶ 13 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 14 Affirmed.